

WRITTEN TESTIMONY OF
DIANE REGAS, ACTING ASSISTANT ADMINISTRATOR FOR WATER
U. S. ENVIRONMENTAL PROTECTION AGENCY
ON THE EPA FISCAL YEAR 2003 INDIAN BUDGET

PREPARED FOR THE SENATE COMMITTEE ON INDIAN AFFAIRS
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INTRODUCTION

I appreciate the opportunity to submit testimony on the President's Fiscal Year (FY) 2003 Budget for the Environmental Protection Agency's (EPA) tribal programs. EPA is committed to protecting the environment in Indian country. In doing this, EPA is guided by its Indian Policy, originally adopted in 1984 and reaffirmed by Administrator Whitman in 2001, that identifies the principles that guide EPA's work with tribes. This Policy includes the essential concepts of working with tribes on a government-to-government basis, supporting tribal self-governance, and addressing the federal tribal trust responsibility. EPA recognizes tribal governments as the most appropriate parties to manage their lands under the federal environmental statutes, wherever tribes demonstrate the ability to do so. Until tribal governments are willing and able to assume the difficult goal of full responsibility for managing federal regulatory programs for Indian country, EPA retains program responsibility and continues to work to fulfill that responsibility. In this instance, however, the Agency encourages tribes to participate to the fullest extent possible in the management of environmental programs within Indian country.

EPA also recognizes that tribes, states, and the federal government are all critical partners in protecting the nation's environment. Thus, EPA's Indian Policy encourages working cooperatively with both tribes and states for the mutual benefit of both in order to bring environmental protection to lands under tribal jurisdiction and state jurisdiction.

The President's FY 2003 Budget request for the EPA tribal programs demonstrates President Bush's continued commitment to strengthening the Tribal/EPA partnership to improve public health and environmental protection in Indian country. Consistent with the Agency's Indian Policy, EPA will focus its FY 2003 investment on supporting the development and implementation of tribal environmental protection programs. EPA believes tribes should have an opportunity - similar to the one we have provided to the states - to receive our assistance as they develop environmental programs. EPA believes this support is the most effective way to promote sound and sustainable environmental management in Indian country that is consistent with our statutory obligations under the nation's environmental laws.

The President's Budget request for EPA's tribal program is \$232 million in FY 2003, an increase of \$3.6 million from the FY 2002 level (see attachment). This request consists of the following:

- \$34.7 million for EPA's Environmental Programs and Management (EPM) account to support development of integrated environmental management programs. This represents an increase of \$300 thousand from FY 2002 EPA funding.
- \$116.7 million awarded to tribes from the State and Tribal Assistance Grant (STAG) account, excluding infrastructure financing. This is a \$5 million increase from FY 2002 EPA funding.
- \$70.9 million under the Water Infrastructure Financing account. This represents a decrease of \$2 million from FY 2002 EPA funding; and
- \$6.7 million for the Superfund Program and \$3.2 million for the Leaking Underground

Storage Tank program which maintains the FY 2002 EPA funding levels for these programs.

Also remaining consistent with FY 2002, the President's Budget request allows 263 EPA full time equivalents (FTEs) to remain committed to administering EPA tribal programs throughout the Agency in FY 2003.

SUPPORTING TRIBAL ENVIRONMENTAL PROGRAMS

There are four important aspects to the implementation of environmental programs in Indian country under EPA's statutes -- building tribal capacity, approving tribes to administer EPA programs, directly implementing programs where tribes are not able to do so, and taking cooperative approaches to implementation. While environmental challenges in Indian country remain, EPA has made substantial progress in these four areas since we first adopted the 1984 Indian Policy.

Developing Tribal Capacity

The Indian Environmental General Assistance Program Act of 1992 (or GAP) is the Agency's principal capacity building tool for tribes and is an essential component of the EPA's partnership with tribes. Using GAP grant resources, tribes plan, develop, and establish environmental protection programs and work toward meeting EPA's goal of creating an environmental program presence for all tribes. In FY 1995, base resources in EPA's GAP program totaled \$8.5 million and provided assistance to approximately 100 tribes. In FY 2002, EPA provided \$52.5 million in GAP funding to more than 400 tribes or 70 percent of the federally recognized tribes. With an additional \$5 million in the President's Budget request for FY 2003, EPA will reach at least 45 additional tribes. GAP

funding can also be used to implement solid and hazardous waste programs for tribes.

EPA capacity building efforts also include internal efforts to build the Agency's ability, through training, information gathering, and targeting financial resources, to better work with tribes in developing and implementing environmental programs in Indian country.

Protecting and Managing Water Quality

In 1987, Congress amended the Clean Water Act to allow eligible tribes to adopt water quality management programs and work toward approval of tribal water quality standards. Tribes have expressed great interest in these provisions and continue to use them to build tribal programs to protect and manage water quality. Over 200 tribes have begun implementing basic water quality programs under the Clean Water Act using EPA funding, and we expect that this will increase by an additional 20 tribes in the coming year. Twenty tribes have EPA-approved tribal water quality standards in place, and EPA has promulgated standards for one tribe, providing the framework for implementing many of the programs authorized by the Clean Water Act.

Under the President's Budget request, EPA will award \$22.7 million in grants to tribes under Section 106 of the Clean Water Act for their basic water quality management programs. The tribes will use these resources to build tribal programs to manage and protect tribal waters through the efforts of their own governments. Tribes will also be able to maintain water quality programs and improve existing capacity to implement water quality programs. The funds will continue to allow those tribes that desire to develop and seek EPA approval for water quality standards to do so.

Additionally, the President's Budget will make available through EPA over \$8 million to eligible tribes to protect wetlands, implement non-point source control programs, and develop watershed

programs to protect their valuable water resources. This funding level includes extending the provision to eliminate the 1/3 percent statutory limitation on Clean Water Act, Section 319 non-point source grant funds to tribes so that approximately 70 tribes, eligible for funding, can protect their lands from the problems resulting from polluted runoff.

Increasing Tribal Drinking Water Protection

Under the Safe Drinking Water Act eligible tribes may adopt Public Water System Supervision (PWSS) programs and become the primary party responsible for ensuring the quality of their own drinking water. In FY 2003 EPA will target almost \$6 million for PWSS grants. While to date only one tribe, the Navajo Nation, has assumed primacy for its drinking water program, two additional tribes have become eligible to receive program development grants. EPA administers federal public water systems supervision programs for Indian country in the absence of tribal programs.

Protecting Air Quality

The President's Budget for FY 2003 maintains tribal funding under the Clean Air Act at the FY 2002 level of \$11 million. With this funding EPA awards Section 103(b) grants to tribes for research, demonstration projects, surveys, and studies related to air pollution and Section 105 grants to tribes to develop and implement air quality programs. Clean Air Act funding helps tribes to work toward receiving "treatment in a manner similar to states" status and subsequent program approvals.

Additionally, EPA funds a wide variety of tribal air program capacity building efforts including a wide array of training opportunities for tribal environmental professionals, support for development of tribal data and monitoring information, and support to develop a national tribal air organization to allow tribes to understand and have an effect on air quality issues that affect their lands. With EPA funding

and technical assistance, we expect approximately 120 tribes will be working on developing and implementing programs to protect air quality in Indian country.

Reducing Lead Paint Risks

In FY 2003, EPA will support tribal program capacity building, tribal program implementation, and EPA direct implementation activities to protect tribes' most valuable resource, their children, from lead-based paint issues. To date, three tribes have received EPA program approval and receive implementation funding for their programs. For those tribes not yet receiving program approval, EPA funds capacity building efforts and directly implements other aspects of the federal statute including the workers' certification and accreditation.

Reducing Pesticide Risk

EPA continues to emphasize efforts to address tribal pesticide issues by funding the development of tribal technical capacity, particularly in the areas of risk management, worker safety, training, and pollution prevention. Under the President's Budget for 2003, \$1.3 million will be made available for these efforts and approximately \$2 million to support pesticide cooperative compliance and enforcement programs. This is the same level of funding as EPA made available in 2002.

Information Technology Efforts

The President's Budget request for FY 2003 includes \$2.5 million, as did the FY 2002 budget, to support the environmental information grant program which promotes tribal participation in data exchange efforts and the EPA Exchange Network and brings our under represented tribal partners closer to some of the advantages technology can offer. This grant program builds upon existing efforts to include EPA's tribal partners in current data and information technology efforts.

Tribal Science Council

In FY 2003, the Agency will build upon its successes and continue to work with the EPA/Tribal Science Council, which was established in 2001. The Tribal Science Council provides a forum for tribal and Agency representatives to discuss science issues of importance in Indian Country. It provides the opportunity for tribes to become more involved in on-going scientific activities, such as the Environmental Monitoring and Assessment Program and the Environmental Indicators Initiative.

Tribal Cooperative Agreement Authority

Similar to a provision included in EPA's FY 2001 and FY 2002 appropriation, the President's Budget for FY 2003 requests statutory authority, commonly referred to as the Direct Implementation Cooperative Agreement Authority, to allow EPA to enter into cooperative agreements with tribes to assist EPA in implementing federal environmental programs in the absence of acceptable tribal programs. Without such a provision, federal law generally prohibits such an award. This innovative approach to capacity building allows for a more gradual transition to tribal program implementation, and possibly full program approval, by allowing for varying degrees of tribal involvement based on an individual tribe's capability and interests. The provision also assists EPA in bringing environmental protection to Indian country.

TRIBAL WASTEWATER AND DRINKING WATER INFRASTRUCTURE

Safe drinking water and proper treatment of sewage are essential services in every American community. The federal government has supplemented tribal, and other federal agency funding to tribes,

for these projects through the Clean Water Act and Safe Drinking Water Act State Revolving Fund (SRF) tribal set-asides for wastewater and water infrastructure. Tribes face significant needs for infrastructure to treat wastewater adequately and provide for safe drinking water: EPA estimates current needs of \$650 million for tribal wastewater treatment systems -- in some instances providing indoor plumbing for the first time -- and \$2.0 billion to provide safe drinking water. To meet these needs, the President's Budget request includes a provision to continue the temporary use of a 1.5 percent tribal set-aside in the Clean Water SRF for wastewater infrastructure grants to Tribes. Such a set-aside would allow EPA to award over \$18 million in grants to tribes to meet basic sanitation needs in Indian country.

The Drinking Water SRF tribal set-aside, set at 1.5 percent by statute, allows EPA to support tribal drinking water infrastructure needs with \$12.8 million in grant funding. Both the Clean Water Act and Safe Drinking Water Act set aside percentage levels are the same as in FY 2002.

EPA has had an ongoing commitment to working with the Alaskan Native Villages on their particular infrastructure issues and devoted specific funding to the Alaskan Native Villages in FY 2002. The President's Budget for FY 2003 continues these efforts with \$40 million allocated to Alaskan Native Villages for the construction of wastewater and drinking water facilities, the same amount appropriated by Congress in FY 2002.

SOLID WASTE AND EMERGENCY RESPONSE

The President's Budget request maintains FY 2002 funding levels for tribes at \$6.7 million for

the Superfund program and \$3.2 million for the Leaking Underground Storage Tank program. The Superfund program allows tribes to promote better hazardous waste management in Indian country, clean up contaminated waste sites, and prevent hazardous waste-related accidents. Tribal funding under the Leaking Underground Storage Tank (LUST) program is designed to promote rapid and effective responses to releases from Underground Storage Tanks (USTs) containing petroleum. Forty five LUST cleanups will be completed in FY 2003 for a cumulative total of 617 cleanups since 1987 in Indian country.

CONCLUSION

For many years, EPA has worked together with Indian Tribes in a wide variety of programs to improve human health and environmental conditions in Indian country. The President's Budget request for FY 2003 continues these efforts and reaffirms our commitment to Indian country.